

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 05-20

December 9, 2004

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Richard A. Siegel, Associate General Counsel

SUBJECT: Casehandling Guidance under
Saint Gobain Abrasives, Inc., 342 NLRB No. 39 (July 8, 2004)

On July 8, 2004 the Board issued its Decision on Review and Order Remanding in *Saint Gobain Abrasives Inc.*, 342 NLRB No. 39 (July 8, 2004). In *Saint Gobain* the Board reversed the Regional Director's administrative dismissal of the decertification petition, reinstated the petition and remanded it to the Regional Director for further action. This memorandum provides initial guidance to the Field in applying this Decision.¹

In *Saint Gobain*, the incumbent Union filed an unfair labor practice against the Employer alleging a unilateral change and a decertification petition was thereafter filed.² Having found that the charge had merit, the Regional Director then considered the impact of that finding upon the decertification petition. She administratively determined that there was a causal nexus between the allegedly unlawful unilateral action and the decertification petition;³ and because of that nexus, she dismissed the petition based on a disaffection theory.⁴

The Board noted the circumstances in *Saint Gobain* of (1) a single unilateral change on a single subject⁵ and (2) significant factual issues under a *Master Slack* analysis as to the impact of that change. The Board concluded that in such circumstances, it was not appropriate to "speculate," without facts established in a hearing, that there was a causal relationship between the conduct and the disaffection manifested by the employees in the decertification petition. Rather, the Board concluded, a hearing should be held to resolve the genuine factual issues presented by these circumstances.

¹ *Saint Gobain* deals only with a claim of employer-caused disaffection arising in the context of a decertification (RD) petition. If a similar claim arises in another representation case context, please advise your Assistant General Counsel or Deputy.

² Pursuant to the Board's Blocking Charge Policy (Casehandling Manual, Representation Proceedings, Sections 11730-11733), the Regional Director, during the initial pendency of the unfair labor practice charge and prior to issuing the Complaint, had pended - or 'blocked' - processing of the petition.

³ *Master Slack*, 271 NLRB 78 (1984).

⁴ CHM Sections 11730.3(c), 11733.2(a)(3) and 11733.2(b).

⁵ Between the time of the Regional Director's dismissal of the petition and the Board's Decision on Review herein, an administrative law judge held a hearing on the alleged unfair labor practice and recommended dismissal of the Complaint in relevant particulars. The Board's decision in the complaint proceeding issued on October 29, 2004, adopting the recommended Order of the judge, *Saint Gobain Abrasives, Inc.*, 343 NLRB No. 68.

Saint Gobain does not involve the situation where a Regional Director determines that a decertification petition should be “blocked” by the pendency of an unfair labor practice charge. Rather, *Saint Gobain* is implicated only when the Regional Director finds merit to the blocking charge and a disaffection issue arises regarding the petition (CHM Section 11730.3(c)). In such circumstances, the Regional Director must consider the applicability of *Saint Gobain* and administratively investigate whether there was a causal relationship between the meritorious unfair labor practice allegations and the disaffection manifested by the employees in the decertification petition.

If the investigation establishes that there was no causal relationship, the Regional Director should not give further consideration to dismissing the petition. Rather, the Regional Director should reassess whether the charge should continue “blocking” the processing of the petition. In circumstances where the investigation establishes that there may be a causal relationship between the alleged unfair labor practices and employee disaffection, the Regional Director should contact the Division of Operations-Management to consult about further processing of the petition. As we develop experience based on these submissions, we will supplement this guidance.

If you have any questions about this memorandum, please contact your AGC, Deputy or the undersigned.

/s/
R.A.S.

cc: NLRBU
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